

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

UNITED STATES OF AMERICA,)
)
vs.) **Case No: CR 05-S-209-NE**
)
VONDA PROCTOR.)

MEMORANDUM OPINION

Before the court is the defendant's motion to compel the United States to file a Rule 35(b)¹ motion following her plea and sentencing. (Doc. 95). The matter was

FEDERAL RULE OF CRIMINAL PROCEDURE 35(b) provides:

(b) Reducing a Sentence for Substantial Assistance.

(1) In General. Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

(2) **Later Motion.** Upon the government’s motion made more than one year after sentencing, the court may reduce a sentence if the defendant’s substantial assistance involved:

(A) information not known to the defendant until one year or more after sentencing;

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or

(C) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

(3) Evaluating Substantial Assistance. In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's

referred to a magistrate judge of this court for initial review. On September 10, 2009, the magistrate judge entered a Report and Recommendation finding that the defendant's motion was due to be denied. (Doc. 100). No objections to have been filed to the report and recommendation.

The court has considered the entire file in this action together with the Magistrate Judge's Report and Recommendation and has reached an independent conclusion that the Report and Recommendation is due to be adopted and approved. The court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusion of the court. In accordance with the recommendation, the defendant's motion to compel the United States to file a Rule 35(b) motion is due to be denied. An appropriate order will be entered.

DONE this the 31st day of October, 2008.


United States District Judge

presentence assistance.

(4) Below Statutory Minimum. When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.

FED. R. CRIM. P. 35(b).